



John P. Contini *
Marlon E Bryan
Ahiza Hernandez Johnson

*Also Member of
Massachusetts Bar

LAW OFFICES OF

JOHN P. CONTINI
& ASSOCIATES, P.A.

2003 MAR 18 A 10:52

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

11 March 2003

Rhonda J. Vosdingh
999 E Street NW
Washington, DC 20463

Re: Confidential FEC filing by Gary Esporin; Centex filing

Dear Mrs. Vosdingh:

We understand that you have received a letter from Centex Corp. requesting that you consider their "filing" to be a form of "self-reporting". I represent Gary Esporin, the "whistleblower" in connection with the actual, real reporting of the "questionable campaign contributions" involving his employer, Centex Corp. My client self-reported back in November of 2002, though he did not have the savvy or sophistication to hire *Arnold & Porter* and file with you specifically, as Bob Litt of *Arnold & Porter* has done. Gary reported himself and his superior, Bob Moss (the individual who championed the campaign contribution reimbursement program and who ordered Gary Esporin and others to follow his program), to Larry Hirsch, the CEO of the parent corp., Centex Corp., in the now-obvious whistleblower email/memo. We are attaching this email/memo, highlighting the operative phraseology of "questionable campaign contributions" jointly authored by Gary Esporin and Mark Layman back in November of 2002. That is the forum chosen by a layperson like Gary to self-report/report, so please accept his filing close to a half a year ago as the true filing and self-reporting of these transgressions, and please consider the "filing" by Centex (cross-dressing as a "self-reporting") to be what it actually is, a carefully-maneuvered, disingenuous, Machiavellian *Arnold & Porter/Centex reaction*, albeit five months late, to Gary Esporin's sincere, true and actual self-reporting/reporting.

You will find attached a letter/memo from Gary Esporin, providing some history about these events from his personal perspective. If you read nothing else in this filing letter, or if you were to overlook Gary's successful polygraph results and all the other attachments, please review and seriously consider the sincere thoughts, recollections and reflections detailed by Gary in this attached, personal chronology.

I acknowledge that I appear by these words to be upset at the individuals responsible for concocting the *Arnold & Porter* and Centex "filing"; however, Gary and I

888 East Las Olas Blvd., Suite 601 • Fort Lauderdale, FL 33301
735 South Street • Boston, MA 02131

954.766.8810 • 1.800.CONTINI (266.8464) • Fax 954.766-8126

E-mail: john@ipcontini.com • www.ipcontini.com

2003 MAR 18 10:52 AM



feel "used" inappropriately and victimized by a corporate employer who asked for our help, received our help and has now gone off alone with an independent "filing", choosing at the 11th hour to disallow us from joining them in a formal filing with you, the FEC, and the Florida Election Commission. It was Gary who reported all this in the first instance, and it was Gary who helped Bob Litt and *Arnold & Porter* and the Centex parent corp. with production of all the operative and relevant records in support of his self-report and whistleblower report, helping his *parent* and the *parent's* lawyer, *Arnold & Porter*, every step of the way, and yet we were rejected after being "used" exhaustively by all the principals of *Arnold & Porter* and Centex. Gary Esporin had every reason to presume that there was nothing inappropriate about this Centex corp. *political campaign contribution reimbursement "program"*, given the fact that it had been "passed on" and "approved internally" by CEO's above him in the corporation, together with their lawyers (!). Gary saw correspondence and notes by and between these Centex *parent* corp. superior officers and their lawyers, which led Gary to *erroneously* believe that this "*campaign contribution reimbursement program*" (inappropriately referred to internally as "*Discretionary Management Bonus*") was legal and had been approved by the Centex *parent* corporation's "*Audit Review Committee*". This "*program*" was factored into the "*approved*" corporate budget, *after "review"* by the budget committee and the same Audit Review Committee, suggesting even more that there was nothing inappropriate about this "*program*"; and, in fact, the internal approvals by the senior officers, together with the approval of the "*Audit Review Committee*", essentially convinced Gary that the activity was apparently legal, however "*questionable*". Who was he to question these lawyers above and around him, especially after these fully-informed (?) lawyers have had time to consult with Centex CEO's and the Audit Review Committee? He was thereafter directed by his boss, recently-fired former CEO Bob Moss, to process the checks/reimbursement, and he complied; however, as he was bothered more and more over time, he later wrote to the Centex *parent* corp. CEO, Larry Hirsch, of these "*questionable campaign contributions*", as described above when referring to Gary's whistleblower email/memo in November of 2002.

Yes, I am aware that *Arnold & Porter* on behalf of Centex, provided you with a paragraph in their "filing", telling you how "*cooperative*" Gary has been; but, this was an attempt to assuage Gary's feelings by "*throwing him a bone*". This bit of placating was done on the eve of rejecting us last week, disallowing us from joining them in meeting with you or co-signing a jointly filed document, etc. We are attaching all of the relevant records earlier provided to his *parent* employer, including Gary's **successful polygraph results**, and I *implore* you to *please* consider the true identity of the actual individual who is responsible for a sincere filing and self-reporting in this case, Gary Esporin.

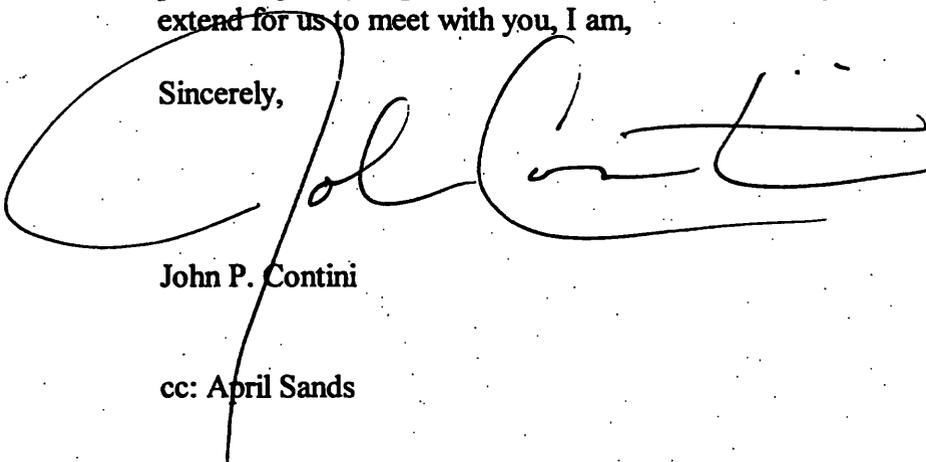
Marty Cochran of *Arnold & Porter* may not have provided you with these records and all this information when she recently met with April Sands of your office. By copy of this confidential filing to April Sands, I am requesting that the earlier "*filing*" by Centex be reviewed and considered now in proper context, or in conjunction with Gary's FEC filing and earlier, internal corporate self-reporting. I believe April Sands may have unwittingly received a lot of Washington-insider *spin-doctoring* and no records or

supporting documentation of any kind; and, were that the case, we believe that it is appropriate now to add some real illumination, facts, records and polygraphs to *Arnold & Porter's* cavalier visit. They brag on their familiarity with your office and Marty's former dealings with April Sands on another unrelated case; while we, on the other hand, are not dug-in politically and able to rest on familiarity, but instead are forced to rely on the real records, the bare *truth* and the real history of Gary's earlier self-reporting and his "*whistleblower*" reporting of Centex superiors, etc.

The Commission protocols suggest several options for the both the Commission and the respondents. I am specifically referring to the option of choosing the "*Alternative Dispute Program*", and/or the separate option of electing "*Conciliation*" as the means of any dispute resolution with the Commission. Though this request may be somewhat premature and out of order, *please* allow this letter to serve as our request that we resolve any potential dispute via one of these two (2) alternative dispute or conciliation methods. We do not wish to engage the Commission in any sort of adversarial proceedings, choosing instead to amicably resolve *any* potential issues through "*Conciliation*" or the Commission's "*Alternative Dispute Resolution Program*". Gary and I have been working with local counsel, Steven Polin, located at 1712 I Street NW, Washington D.C. 20006, available to meet with you at any time on very short notice.

Thanking you in advance for reviewing these materials and for hopefully perceiving Gary Esporin in this context, and looking forward to any opportunity you extend for us to meet with you, I am,

Sincerely,



John P. Contini

cc: April Sands

23 04 406 3120



Gary P Esporin
03/11/2003 11:40 AM

To: Larry Hirsch/EXEC/CORP/DALLAS/CENTEXCORP

cc:

Subject: Why??

Hi Larry!!

I am sure that you are becoming quite sick of hearing from me at this point and I truly hate for that to be the case.

I do not know where else to turn as you (and David Quinn) have always represented "Centex" to me so I am coming to you to ask, what is to me the "ultimate question"!!.

"Why"???

Please understand that I have asked myself this question most of my waking hours over the last two months.

The circumstances from my perspective and my heart are as follows:

- 1) My boss (Bob Moss, CEO, COB of Centex Rooney) came to me in 1998 and told me that he had met with his superiors Brice Hill (CEO of Centex Construction Group) and Ken Bailey (COO of Centex Construction Group) and that they (Brice and Ken) had approved a plan whereby Centex Rooney will reimburse employees for political and charitable contributions that they make in their name. Bob detailed (please recall my hand written "note to file") to me how this is to work. Was I wrong to assume that these CEO'S and the COO had done their "due diligence" and cleared this plan all the way to the top of Centex?
- 2) At bonus time I prepared a spreadsheet as instructed and submitted it to Chris Genry (CFO of Centex Construction Group and my "dotted line" boss) for approval. Chris called me to ask about the now infamous "discretionary management adjustment" column and I explained to him what it was and that this procedure had been agreed to by Bob, Brice and Ken. Chris and Brice approved the spreadsheet and all bonus checks were issued as requested.
- 3) The same process was followed again the next year without any questions being asked by anyone.
- 4) The number of Rooney executives (including the company's General Council) who participated the second year increased as the process gained widespread implementation.
- 5) When Bob Moss assumed the Group leadership role, Mark Layman and myself requested that Bob once again review this procedure (along with other "control" processes and approval items) with "Centex Corp." as he no longer had Brice and Ken sitting atop of him. Bob came back to Mark and I and stated that we were okay to continue as usual.
- 6) Bob Moss encourages other operating companies (CCC-SE and CCC-SW) to implement this same plan at their companies.
- 7) I maintained meticulous files with all detailed supporting documentation, spreadsheets, calculations (including campaign refunds by candidates as "credit offsets" in the next years bonus) fully expecting that any day "internal audit" could request to review these files to justify the amounts paid out of the "discretionary management adjustment" column on our bonus spreadsheets. These are the files that I have turned over to Ray Smerge and have made the internal investigation and self reporting process possible for Centex.

8) When Mark Layman and I went through the "Bob Moss" evaluation process, as requested by you, in November we once again raised the issue of "questionable political contributions" because it simply never "felt right" over the years even though it was an "approved" practice (please recall my successful polygraph tests). I have struggled with other "do not feel right" issues each year as well (i.e. Florida Intangible Tax, entity structures ... etc.) but they were not listed in our evaluation as they did not pertain to Bob Moss.

Having stated all of the above "facts" from my perspective, I ask myself (over and over) and am asking you what have I done wrong?

What could I or should I have done differently?

Who else (this plan was approved by CCG CEO, COO & CFO) should I have alerted or checked with?

Did Legal approve (I have to assume so as our company CLO participated in this plan)? I am not an attorney, this was my indication that this practice was okay.

Why am I being punished for following the directions of the people that I reported to (Bob Moss, Brice Hill, Ken Bailey and Chris Genry)?

Why have I been taken out of a financial role? Why have I been taken out of a Centex Construction Group Role? Why am I being told that I can be terminated for "cause" at any time? Why am I not going to be receiving my "earned" bonus?

I think it is important for you to be aware of the fact that, in order for me to pay for my legal representation to date, I have had to sell all of my exercisable stock options.

To meet my obligations going forward, I am also having to liquidate other personal assets (car, vacation home ...etc.).

I am in the process of selling my home (this is the "crushing blow" to Susan and I) and belongings in an effort to "hunker down" and live as frugally as possible in order to weather this storm of uncertainty.

For my sanity and in order for me to maintain any self respect, I would really appreciate your feedback.

Please help me understand? why??

POLYGRAPH OFFICES OF
FRANK A. CARBONE
CERTIFIED POLYGRAPHER

3401 FAIRFIELD STREET
THE VILLAGES, FLORIDA 32162-7155

TELEPHONE: (352) 751-0626

POLYGRAPH REPORT

TO: Mr. John P. Contini, Esquire
888 East Las Olas Blvd., Suite 601
Fort Lauderdale, Florida 33301

DATE OF TEST: February 3, 2003
TIME: 6:45 p.m.
CASE # N/a

EXAMINEE: ESPORRIN, Gary Paul
TYPE OF EXAMINATION: Specific

PERSONAL DATA: ESPORRIN, Gary P., age 49, DOB: 1/13/54
POB: Brooklyn, NY

This examination was conducted to determine and verify the veracity of statements made by the examinee concerning specific information he allegedly received, and events that occurred during his tenure with Centex Construction Group. The focus of the statements pertained to a so called "contribution bonus reimbursement plan" within the Centrex Construction Group at Centex-Rooney. Prior to conducting the examination, the issues were thoroughly discussed with you and the examinee. He advised that the information he had provided was true and accurate. Because the issues were too numerous to test in one examination, a second examination was conducted as indicated below.

During the pretest interview, Mr. Esporin was explained the polygraph technique and procedures and he stated that he understood both. He then signed the polygraph consent and release form indicating his willingness to take this examination. He stated that he was in fair health although his past medical history did not indicate any condition that might preclude him from being tested at this time. An Acquaintance test was conducted to

MEMBERS:

AMERICAN POLYGRAPH ASSOCIATION • FLORIDA POLYGRAPH ASSOCIATION

23 04 406 3123

ESPORRIN, Gary P.

determine his testability. The result of that test was positive and revealed that he was a suitable subject for polygraph testing.

Considering the information provided, a Backster Zone Comparison test was constructed and administered utilizing the *Axciton Computerized Polygraph System*. The following relevant questions were formulated and reviewed with Mr. Esporin before testing. His answers are indicated in parenthesis.

R43: In March 1998, did Bob Moss tell you that he was going to use his discretionary authority to implement a contribution bonus reimbursement plan? (Yes)

R44: In 1998, were you one of the officers who developed the contribution bonus reimbursement plan? (No)

R45: In March 1998, did Bob Moss tell you that Brice Hill had approved the proposed contribution bonus reimbursement plan? (Yes)

In the second examination, which was conducted on February 4, 2003, the following relevant questions were formulated and administered utilizing the same system and testing format.

R43: During early 2000, did Bob Moss tell you that Larry Hirsch had approved the continuation of the contribution bonus reimbursement plan? (Yes)

R44: Two weeks ago, did Bob Moss admit to you that Larry Hirsch had not actually approved the continuation of the contribution bonus reimbursement plan? (Yes)

A series of three (3) polygrams were conducted in each examination, which contained the above listed questions. The resulting physiological data was then analyzed utilizing the "Polyscore" from Johns Hopkins University, the Axciton Analysis System, the Identifi Scoring System and my own numerical evaluation. Based on these analyses it is my considered opinion that Mr. Esporin had answered truthfully to all of the above listed questions.

Polygraph Report, page 3

ESPORRIN, Gary P.

A handwritten signature in cursive script, appearing to read "Frank A. Carbone". The signature is written in black ink and is positioned above the printed name and title.

Frank A. Carbone
Board Certified Polygraphist
Accredited by the Florida Polygraph Association
FPA Certificate No. 103

23 04 406 3125



JOHN P. CONTINI
& ASSOCIATES, P.A.



John P. Contini *
Marlon E Bryan
Ahiza Hernandez Johnson

*Also Member of
Massachusetts Bar

4 February 2003

Robert S. Litt
Arnold & Porter
555 12th St. NW
Washington D.C., FI 20004-1206

Dear Mr. Litt:

I look forward to meeting with you in Dallas at the offices of Centex on Wednesday, February 5th, 2003. Gary Esporin and I welcome the opportunity to sit down with you and Ray Smerge and Larry Hirsch, to address and resolve any remaining questions as we approach the Audit Review Committee Meeting on February 12th.

As you are already aware, Gary has been very diligent in providing Ray Smerge with spreadsheets and other data via fax and email for weeks now, as certain questions arose regarding executive bonuses and political contributions, etc. Ray Smerge insisted that Gary meet with both of you while also advising that it was in Gary's best interest to get a lawyer, and that brings us to my involvement and why I appeared in the offices of Centex-Rooney in Plantation, Florida. It was during that meeting, when I asked my client to wait in his office down the hall, that Ray Smerge stated: "I am angry," six (6) times. This anger on the part of Mr. Smerge naturally caused me to have even greater concern for Gary Esporin and his immediate future. Many of the attachments to this letter speak to this concern.

Please see as our first attachment the handwritten approvals and notations and references to Brice Hill and Chris Genry, dating back to 1999, all relating to this questionable "discretionary management bonus" column, all attached as one (1) evidentiary attachment, and keep in mind that the actual handwriting approving the bonus program is that of Chris Genry.

Next, we are attaching a very detailed, internal email attachment co-authored by Mark Layman and Gary Esporin concerning Bob Moss and his strengths and weaknesses as a CEO. This email attachment was co-authored by Gary Esporin and was sent to Larry Hirsch in the year 2002, back before Thanksgiving, at the behest of Larry Hirsch; and, in keeping therewith, Gary Esporin illuminates these "questionable political contributions". I tell you later in this letter why Gary's memo falls squarely within the purview of the protections provided by Florida Statute §448.102! You will note that Gary Esporin uses these exact words after he uses the word "examples", and you will

23 04 406 3126

also note that this appears under that section entitled **"Belief that rules and standards don't apply to him personally or CCG as a whole."**

Please keep in mind that Gary Esporin was not attempting to conceal this **"discretionary management bonus"** last year or any preceding year; quite the contrary, it was Gary Esporin who was bringing in the sunshine and illuminating the question about this **"questionable political contributions"** when he co-authored the email attachment he directed to Larry Hirsch in 2002.

We are also attaching the polygraph report administered to Gary Esporin by the certified polygraphist Frank A. Carbone, three-time president and life-member of the Florida Polygraph Association. We are attaching Mr. Carbone's CV, together with the polygraph reports administered on February 3rd and 4th, evidencing the fact that Gary truthfully answered any and all questions directed to him by the polygraphist concerning the relative Centex issues. Normally, we would never provide you with these polygraph reports at this early juncture, at what we would call **"non-proceedings"**; however, in an abundance of caution and to demonstrate our zeal and spirit of cooperation, we wanted to share with you all of the fruit of our efforts at illuminating all of the truth surrounding what Gary knew about the bonus programs, and when he knew what he knew, etc. Asking you to believe us is simply not good enough under most circumstances these days, it seems, so we are simply providing you with some backup supporting documentation to corroborate Gary's testimony or version of the facts, not unlike the backup data he would typically provide as an accountant or CFO in any type of invoicing process, etc. Though you never requested these polygraph exams, we felt confident enough in Gary's voracity that we went ahead and scheduled the examinations and took the exams and achieved the results and wanted you to have these results for your review committee. Should any other involved individual have testimony which conflicts with Gary's testimony in this regard, I would only ask that you ask that individual to do the right thing and submit to a polygraph examination forthwith.

Lastly, please review the handwritten note which appears to be **"talking points"** by Bob Moss, preceded by circular bullets, authored a week ago Monday just before a phone call placed by Bob Moss to Ray Smerge. Ray Smerge put the phone on speaker to allow Larry Hirsch to listen to Bob. Bob made the handwritten notes from this attachment while in the presence of Gary Esporin just before making the phone call, apparently to keep from forgetting what to say during the call, leaving a copy of his notes with Gary. As you can see from Bob's handwritten notes, it is clear that Bob Moss is the designer of this political contribution strategy for CCG. These handwritten notes from Bob Moss appear to be consistent with Gary Esporin's concerns as expressed in the email attachment I earlier referenced and attached, wherein Gary illuminates his concerns about Bob's **"questionable political contributions"**, the email attachment which was directed to Larry Hirsch in 2002.

I am very confident that our efforts in working together with you, Mr. Litt, and with Ray Smerge and with Mr. Hirsch, will be very productive, as we appear to have very similar interests, the common goal of moving forward within the family of Centex for

many more productive years. Gary Esporin and his wife and family have been blessed with wonderful friends and a corporate family within Centex for over 23 years now and they cannot imagine working anywhere else except within this corporate family, so they eagerly await your request to enlist their help with any other unanswered questions or concerns which you may have now or later. Those are Gary's sentiments. I, being less sentimental, would direct your attention to **Florida Statute §448.102**, as the second sentence of subsection (1) speaks directly toward Gary Esporin's 2002 email attachment to Larry Hirsch, putting his "supervisor" on notice of a potential problem within Centex; and, obviously, any retaliatory action taken against personnel such as Gary Esporin would fall squarely within the purview of this statute, which is obviously designed to proscribe this sort of "retaliatory personnel action". You may also want to take a look at **Florida Statute §106** of the 2002 Florida Statutes governing campaign financing, attached, as those sections speak to the corporation's liabilities as well as the individual's liabilities, specifically section **§106.08 Contributions; Limitations subsection (7)(a)**:

"Any person who knowingly and willfully makes no more than one contribution in violation of subsection (1) or subsection (5), or any person who knowingly and willfully fails or refuses to return any contribution as required in subsection (3), commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any corporation, partnership, or other business entity or any political party, political committee, or committee of continuous existence is convicted of knowingly and willfully violating any provision punishable under this paragraph, it shall be fined not less than \$1000.00 and not more than \$10,000.00. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction..."

These statutes may be argued in favor Centex or our executives, but it appears clear to me the finger-pointing is not appropriate under the circumstances, and it is certainly not even factually consistent with reality. I trust that Centex will not be suggesting that Gary Esporin did anything inappropriate, because an allegation of impropriety directed at Gary is one of those fingers which unfortunately points right back at the accuser, which could invite dangerous and disastrous results, up to and including dissolution. It is my fervent hope that you will determine that Gary Esporin has conducted himself at the helm of CFO in a most judicious and ethical fashion, deserving of commendation, consistent with the commendations and merit achievements he has earned over the past 23 years at Centex. I am,

Sincerely,

John P. Contini

23.04.406.3123

cc:

Larry Hirsch, CEO
Ray Smerge, CLO
Centex Corp.
2728 North Harwood
Dallas, TX 75201

23 04 406 3129

RAY SMERGE BONUS RECAP

- NEED POLITICAL CONTRIBUTION STRATEGY FOR CCG - TIM SUGGEST PAGE
- I HAVE ENCOURAGED OUR OFFICER TO BE POLITICALLY ACTIVE WITH SCHOOL BOARD - COUNTY COMMISSIONS WHEN I FELT IT WAS IN THE BEST INTEREST OF THE COMPANY
- WE HAVE WRITTEN COMPANY CHECKS
- HAD FUNDRAISERS AT OUR OFFICE
- PARTICIPATED IN FUNDRAISERS AT HAMES, ATTORNEY OFFICES & MY HOME.

◦ I AM AWARE THAT WHEN I APPROVED SEVERAL OFFICERS HAVE WRITTEN PERSONAL CHECKS

◦ PRIOR TO SUPPORTING ANY POLITICAL ACTIVITY THE OFFICERS WOULD CLEAR WITH ME TO MAKE SURE I CONSIDERED PROPER. & I CHECKED WITH BRUCE TO ASSURE THAT WE NEVER VIOLATED PUBLISHED GUIDELINES.

◦ IN EVALUATING ANNUAL PERFORMANCE & DISCRETIONARY PORTION OF TOTAL INCENTIVE COMPENSATION I CONSIDERED ALL RELATIONSHIP & PERFORMANCE INITIATIVES BY THE OFFICERS. IN DECIDING A VALUE.